

DECISION



18233 *Cohen*
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-203139

DATE: May 27, 1981

MATTER OF: Clark Equipment Company

06522

DIGEST:

Protest against sole-source procurement filed in GAO more than 10 working days after firm's notice of initial adverse action on protest filed with contracting agency is untimely and will not be considered on merits.

AC00020

AC000039
Clark Equipment Company protests the Department of the Army's intended award of a contract on a sole-source basis to Caterpillar Tractor Company for a number of items of airborne/airmobile construction equipment. Clark contends that a competitive procurement would result in a contract at a lower cost to the Government.

The protest is dismissed because it was not filed within the time limits set out in our Bid Protest Procedures, 4 C.F.R. part 20 (1980).

The Army synopsisized the procurement in the Commerce Business Daily on January 30, 1981. On February 3 the Army furnished copies of the sole-source solicitation to a number of construction equipment firms including Clark, with a cover letter stating that a sole-source contract with Caterpillar Tractor Company was contemplated because it was necessary to purchase all vehicles required from one firm, and that if a firm believed that it could meet the Army's need it should contact the contracting activity. The solicitation indicated that proposals would be due by April 3. By letter of March 20 to the contracting activity, Clark objected to the sole-source procurement on the basis that the Government could save money if a competition allowing for multiple awards were conducted. At a March 27 meeting, the Army advised Clark of the specific reasons why it needed to buy all of the

115335

017034

items from one firm and that it would not cancel the sole-source solicitation. The Army also set out its position in writing in a letter dated March 27, which it gave to Clark at the meeting. Clark's protest to our Office was filed on May 1.

Section 20.2(b)(1) of our Bid Protest Procedures requires that a bid protest alleging a solicitation impropriety apparent prior to the date set for the receipt of initial proposals be filed with either the contracting agency or our Office before that date. The requirement applies where subsequent to a Commerce Business Daily announcement of an agency's intent to procure an item on a sole-source basis the protester is furnished a copy of the sole-source solicitation indicating the proposal due date. Hvide Shipping, Incorporated, B-194218, August 30, 1979, 79-2 CPD 166.

Assuming that Clark's March 20 letter to the contracting activity was intended to be a bid protest, the protest to the agency would be timely under section 20.2(b)(1). However, section 20.2(a) of our Bid Protest Procedures states that if a protest has been filed initially with the contracting activity, any subsequent protest to the General Accounting Office must be filed within 10 working days of actual or constructive knowledge of initial adverse agency action. Clark was specifically advised of the Army's position on the matter at the March 27 meeting. Since the protest to our Office was not filed within 10 working days thereafter, it is untimely under section 20.2(a) of our Procedures.

Alternatively, we recognize that the alleged impropriety of the sole-source nature of the solicitation may not have become apparent to Clark until March 27 when it was advised of the Army's specific reasons for proceeding on that basis. In that case, however, Clark's protest to our Office would be untimely under section 20.2(b)(1) of our Procedures, since it was not filed before the April 3 date for proposal receipt.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel